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Before the
Federal Communications Commission
Washington, D.C. 20554

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FILE

In the Matter of	)	MM Docket No. 91-221
	)	
Review of the Commission's	)	
Regulations Governing Television	)	
Broadcasting	)	

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To: The Commission

COMMENTS

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SUMMARY

Due to a substantial increase both in the number of television stations in operation and in competition from several alternative sources for video programming, none of which suffer from the technical handicaps historically experienced by UHF stations, the viability of commercial UHF stations in today's video marketplace is threatened like never before. Vetter Communications Company, Inc. ("VCCI") therefore urges the Commission to relax its Television Duopoly Rule to allow the common ownership, control and/or operation of two television stations with overlapping contours where at least one of the stations is a UHF station. VCCI submits that such a relaxation of the Television Duopoly Rule will not adversely impact diversity or result in any undue concentration of economic power. In fact, the recommended relaxation of the rule will serve the public interest because it will allow UHF stations to compete effectively and to thrive in today's video marketplace.

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To: The Commission

COMMENTS

Cyril Vetter, as Chief Executive Officer of Vetter Communications Company, Inc. ("VCCI"), and pursuant to Section 1.415 of the Commission's Rules, hereby submits VCCI's Comments in response to the Notice of Proposed Rulemaking, FCC 92-209, released June 12, 1992 ("Notice"), in the above-referenced proceeding.

A. Introduction

VCCI is the licensee of Television Station WVLA(TV), Channel 33, Baton Rouge, Louisiana. Television Station WVLA is a NBC affiliate station located in the Baton Rouge ADI, which Arbitron ranks as the 95th market. 1992 Broadcasting & Cable Market Place (formerly Broadcasting Yearbook).

Currently, I am the Chairman and sole owner of VCCI. Although VCCI acquired WLVA in early 1979, my involvement in the broadcast television industry, and particularly UHF television, dates back almost twenty years. During my broadcast career, I have been actively involved in industry issues, with a particular focus and concentration on the problems peculiar to UHF stations and the potential for the development and improvement of UHF stations.

Specifically, I have been actively involved in several organizations which work on issues of importance to UHF stations, including the Council for UHF Broadcasting in the 1970s. Also, I am one of the founders of the National UHF Broadcasters Association, and I served as President of that organization during the 1980s. In the 1990s, I have continued my efforts to inform the public and policy makers of the particular concerns of UHF stations by writing editorials for the trade press and providing testimony before both the Senate and House Communications Sub-Committees. Over the years, my primary objective has been to bring about changes in the television marketplace which would reduce or eliminate imbalances in the marketplace so as to promote the growth and development of UHF stations.

As a licensee of a UHF station, VCCI has first-hand experience of the imbalances of the video marketplace encountered by UHF stations. Such imbalances have grown in recent years because the technical and financial difficulties associated with the ownership and operation of a UHF station have been accentuated as the television industry, as a whole, has been severely affected by the increased competition from other video outlets, particularly cable television as a multi-channel monopoly competitor.

Based on my experience gained during my broadcasting career, and during my ownership of WVLA in particular, I am able to provide the Commission with a unique perspective about the past, present and future of UHF stations. I urge the Commission to focus on and take steps to improve the competitive posture of UHF television stations as they struggle for survival in today's video marketplace. Without such an effort, I believe UHF television will suffer the same fate as AM radio. Because of AM radio's loss of audience share to other superior-quality music sources, there is virtually no such thing as a viable AM stand-alone station today.

As early as November 1977, in the FCC's Docket No. 21049, I quoted a comment by then FCC Commissioner Benjamin Hooks, who in turn quoted former FCC Commissioner Robert Lee:

> Given the fact that our system of broadcasting is uniquely founded on the precepts of private entrepreneurial capitalism, the ultimate commercial success or failure of a licensed broadcast facility is generally left to the natural interplay of the competitive market by this agency.... I am not totally out of sympathy with the commission's desire to foster growth of UHF broadcasting. There are undeniable merits in the points raised in the well reasoned statement of Commissioner Robert Lee that our "...off again, on again machinations have engendered an

> uncertainty which has played a large part of poisoning the UHF spectrum. UHF is largely an unfilled promise...."

Commissioner Hooks's comment resonates truer today than it did in 1977.

In the context of this proceeding, VCCI specifically advocates and supports the relaxation of the Television Contour Overlap (" Television Duopoly") Rule to allow UHF/UHF and UHF/VHF combinations. Such combinations will provide UHF stations with economies of scale that will help ensure their survival.

B. <u>Current State of the Television Industry</u>

As the Commission recognized in the <u>Notice</u>, over the past fifteen years the video marketplace has become a highly competitive environment with a multitude of sources of video programming. <u>Notice</u>, <u>supra</u>, at ¶ 3. In today's marketplace, traditional broadcast television, the once dominant source of video programming, is confronted with fierce competition from cable television and other sources of video programming. <u>Id</u>. at ¶ 4.

However, the competition faced by the broadcast television industry is not limited to a battle for viewing audiences but also one for limited advertising dollars. Unlike cable and other video media outlets, broadcast television is financed by the sale of advertising time without any added revenue generated by the viewers' direct payment. Federal Communications Commission, Office of Plans and Policy, Broadcast Television In A Multichannel Marketplace, 6 FCC Rcd 3996, 4004 (1991) [hereinafter, "OPP Report"]. Consequently, the success of a broadcast television station is directly related to its ability to attract large audiences in order to entice advertisers to spend their limited advertising dollars to purchase time on the station.

As cable and other competitors have grown in importance, they have siphoned away both viewers and advertising revenue from television stations. The effect has been particularly severe in recent years, when many advertisers have cut back their advertising expenditures. Veronis, Suhler & Associates, Inc., The Veronis, Suhler & Associates Communications Industry Forecast, p. 68 (6th ed., June 1992) [hereinafter "VSA Forecast"]. Not surprisingly, many broadcast television stations are struggling as a result. This is particularly the case for UHF stations, which generally have inferior signals and smaller audiences compared to VHF stations.

Even though the profits for the television broadcast industry have declined in recent years, the number of commercial UHF stations has increased dramatically. OPP Report, 6 FCC Rcd at 4011. In May 1990, there where 546 commercial UHF stations, representing a 150 percent increase in the number of commercial UHF stations between 1980 and 1990. Id. This has obviously exacerbated the competitive difficulties UHF stations face.

From their beginnings in 1952, commercial UHF stations have competed with VHF stations which were well-entrenched in the broadcast television industry and had superior facilities. Improvements to UHF Television Reception (Notice of Inquiry), released December 29, 1979, at ¶ 7. During the early years of commercial UHF stations, advertisers and networks preferred VHF stations due to UHF stations' inability to capture large viewing audiences. Id. at ¶ 8. In an effort to offset the slow growth and development of commercial UHF stations resulting from the competitive and technical disadvantages which they experienced, Congress passed the All-Channel Television Receiver Act of 1962, Pub. L. 87-529 (July 10, 1962). Id. at ¶ 9.

In 1978, however, Congress acknowledged that UHF stations continued to be "sorely disadvantaged" to VHF stations. Id. at ¶ 14 quoting S. Rep. 1043, 95th Cong., 2d Sess. (July 28, 1978). In light of the noted disparity between UHF and VHF stations, Congress directed the Commission to "devise a plan for UHF to reach comparability with VHF in as short a time as practicable." Id. quoting S. Rep. 1043, 95th Cong., 2d Sess. (July 28, 1978). As a result of this Congressional mandate, the Commission, in December 1979, released a Notice of Inquiry "address[ing] the fundamental technical differences between UHF and VHF reception and ... propos[ing] and consider[ing] methods for minimizing those differences." Id.

In the 1990s, despite several regulatory efforts designed to make UHF stations more comparable to VHF stations, UHF stations continue to be less profitable than VHF stations. According to the 1991 NAB Television Financial Report, the average pre-tax year-end figure for UHF stations nationwide was a loss of $455,016. The differences in profitability are more clearly demonstrated by comparing UHF and VHF affiliate stations since they have few programming differences. For affiliate stations nationwide, the average pre-tax profit was $3,590,025, whereas, UHF affiliate stations nationwide suffered an average loss of $77,403. See 1991 NAB Television Financial Report.

In light of current conditions in the transformed video marketplace, the Commission should consider a whole range of efforts to ensure that UHF stations do not share the fate of AM radio stations. In the context of this proceeding, the Commission should and can assist UHF stations in their struggle to remain in the marketplace by relaxing its Television Duopoly Rule to allow the common ownership, control and/or operation of two television stations with overlapping contours where at least one of the stations is a UHF station.

C. Relaxation of the Television Duopoly Rule Will Promote Diversity.

The Commission's multiple ownership rules, including the Television Duopoly Rule, were intended to "promote maximum diversification of program and service viewpoints and to prevent undue concentration of economic power contrary to the public interest." Report & Order, 45 FCC 1476, 1476-1477 (1964), on reconsideration, 3 RR 2d 1554 (1964). In considering adoption of the current version of the Television Duopoly Rule, the Commission reiterated that one of the underlying principles of its multiple ownership rules was that "the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have 'an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level.'" Id. at 1477. The Commission also noted that there were fewer channels available for television than radio. Id. at 1484. It appears, therefore, that an underlying rationale for the Television Duopoly Rule was spectrum scarcity. By requiring diversity of ownership for the limited, even scarce, amount of video programming available by terrestrial and traditional broadcast television, it was envisioned that the programming provided would be sufficiently diverse.

In today's video marketplace, the sources and amount of video programming are no longer scarce. Today, viewers have access to far more broadcast television stations than was the case in 1964. Notice, supra, at ¶ 17. In addition, several alternative video outlets, such as cable television, home satellite dishes, videocassettes, video games and computers, wireless cable systems, and satellite master antenna television, have appeared on the scene. OPP Report, 6 FCC Rcd at 4009. In light of these substantial changes in the video marketplace, the underlying rationale for the Television Duopoly Rule, particularly as it relates to UHF stations, simply no longer applies. Accordingly, the Commission's rules should be modified to prevent only those threats of undue economic concentration or adverse impacts on diversity which are "real" possibilities in the current market.[1]

D. The Duopoly Rule Should Be Relaxed To Permit Ownership of Two Stations With Overlapping Contours If One Is a UHF Station.

Although VCCI supports relaxation of the Television Duopoly Rule, it does not advocate the total elimination of the rule. Instead, VCCI advocates the relaxation of the

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[1] The Commission followed this reasoning in its recent revision of its radio rules and policies. See Report & Order, 70 RR 2d 903 (1992).

Television Duopoly Rule to permit UHF stations to be able to compete more effectively with other television stations in their local market and with the alternative sources of video programming present in today's video marketplace. The ability of UHF stations to compete effectively and to thrive in today's video marketplace has been hampered in three ways.

First, due to the significant increase in the number of commercial UHF stations over the last decade, there are more stations vying for even fewer advertising dollars. Each UHF station in the market can only obtain a limited amount of advertising revenues. The history of UHF television clearly shows that UHF stations are the first ones to go off the air where a market has too many stations. Notably, average profits for both UHF independents and affiliates declined over the latter portion of the 1980s. OPP Report, 6 FCC Rcd at 4025.

Second, in light of the fact that UHF stations historically have not been able to achieve the level of profits gained by competing VHF stations due to the technical distinctions between the two services -- increased technical expenditures, UHF's lower quality of reception, and the limited geographic reach of UHF's signal -- UHF stations are also hampered in their efforts to compete with alternative sources of video programming. Although cable carriage may allow UHF stations to overcome certain technical handicaps, UHF stations still must be innovative and develop ways to attract viewers from the alternative video outlets and other entertainment sources which compete for viewer time. OPP Report, 6 FCC Rcd at 4012.

Third, contrary to some optimistic predictions, broadcast losses will not necessarily end due to the slowing of cable expansion. See VSA Forecast, supra, at 69. Cable is only one of several alternative video programming sources competing with broadcast television in today's video marketplace. Specifically, there are several developing technologies, such as fiber optic delivery of cable signals, video compression, high definition television, interactive services, and signal encryption, which are likely to increase the competition experienced by the broadcast television industry. OPP Report, 6 FCC Rcd at 4042. The VSA Forecast claims that "a central premise of this positive advertising forecast is that the worst is over for the networks in terms of competition for viewers." Id. at 74. In light of the numerous developing technologies, however, including those that will benefit cable in particular (e.g., fiber optics), it is more likely that competition from both cable and other video sources will continue to grow. Consequently, relief from competition does not appear to be in sight.

With a relaxed duopoly rule permitting combinations between UHF stations and UHF and VHF stations, UHF stations will be able to realize economies of scale through joint operation. As a result, UHF stations will be able to devote more resources to the production of local programming aimed at distinguishing themselves from their competitors. In addition, there will not be a threat of undue economic concentration in light of the numerous video outlets present in the marketplace. In short, the goal of diversity will be far better served by rule changes that will allow UHF stations to compete effectively, rather than wither away.

The proposed rule change is critical to the survival of UHF television. Without relaxation of the current rule, which was enacted in a completely different industry environment, UHF stations face the same scenario that AM stations have been through. Clearly, the public interest would be better served by allowing common ownership and control of UHF stations with another local station, either VHF or UHF.

Conclusion

For the reasons given above, VCCI supports the relaxation of the Television Duopoly Rule. The Commission recently provided similar relief to the radio industry by relaxing its radio ownership rules, with no adverse impact on diversity. VCCI specifically urges the Commission to relax the Television Duopoly Rule so as to allow UHF/UHF and UHF/VHF combinations, despite overlapping contours.

Respectfully submitted,

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August 24, 1992